

In Her Own Way: Marietta Stow's Crusade for Probate Law Reform Within the Nineteenth-Century Women's Rights Movement

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I. INTRODUCTION

Around the turn of the century, as she was suffering from breast cancer, Marietta Stow began constructing a scrapbook to document her life. On the front cover of this remarkable tome, she pasted a slip of paper, upon which she wrote, "Whoever has charge of my effects, during my life or after my death, I charge to keep this book sacred as a memoranda [sic] of noble work. Never let anyone see it alone, for fear of . . . vandalism. /s/ Mrs. Stow"¹ Stow's scrapbook was not meant to be a private memoir. In fact, little of Stow's life had been lived privately. She seemed driven to translate personal events into public statements, at the same time seeking recognition and accolades for her work on a variety of reform movements.² This scrapbook, assembled in her twilight years, was a deliberate attempt to shape the attitudes of any future biographer. Yet, for all her efforts, Stow's primary role in the nineteenth-century women's rights movement has yet to be fully recognized or contextualized.³

During a period when women's political energies were increasingly focused on the fight for suffrage, Marietta Stow was the only women's rights reformer to pursue an agenda in the area of probate law.⁴ This appeared to be both a worthy and an achievable goal. Her cause was worthy, because probate law in the nineteenth century both crucially affected the life course of women and was marked by severe gender inequality. It appeared achievable, to the extent that, in an era of an extremely limited welfare state, the legal and political systems (as well as husbands and fathers) would have had an interest in using traditional private law to protect widows and orphans from economic deprivation. Despite these considerations, however, probate law reform was never embraced by the organized women's rights movement in any broad or sustained manner.

This disinterest by national movement leaders has probably led historians to pay it scant attention as well. Joan Hoff, in the first major attempt to periodize and synthesize the legal history of American women, noted a correlation between legal advances for women and a high degree of activity

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by local reformers in the nineteenth century. Inasmuch as these legal advances occurred at the state level, Hoff speculates that there is "a connection, however tenuous, between the emergence of new domestic relations, marital-property, and inheritance laws and the early women's movement."⁵ This study moves beyond speculation and closely examines the connection between the women's rights movement and probate law reform.

In some ways, this article is a study of an individual woman's crusade for increased legal rights for women, a crusade highly informed by her personal experiences and marked by her unique voice. More broadly, however, this is a study of a reform movement conducted outside the aegis of established women's political organizations, yet nevertheless influenced largely by the women's rights movement of the nineteenth century. After the Civil War, nationally-based movement leaders such as Lucy Stone and Susan B. Anthony began narrowing their agenda to woman suffrage, thereby casting aside commitments to legal, economic, social, and religious equality which had been set forth in the Seneca Falls Declaration of Sentiments in 1848. Stow, meanwhile, moved in a different direction. As an individual reformer she developed and acted upon an unusually broad vision of female emancipation—a vision in which probate law reform constituted only one aspect of the interconnected political, economic, social, and legal revolution necessary to bring about gender equality.⁶

II. WIDOWHOOD: A GALVANIZING EXPERIENCE

Stow's probate reform mission was almost entirely shaped by her own marital experiences, but these were in many ways typical within Victorian-era society. Her first marriage ended in the 1850s, when she was only in her twenties. At that time she was known by her nickname, Lizzie, and her married name, Bell.⁷ She had grown up near Cleveland, Ohio, and before marriage had supported herself by schoolteaching.

Returning to self-support, Lizzie Bell now spurned teaching for the limelight of public lecturing and entertainment. Nevertheless, the low pay and uncomfortable living conditions which had accompanied schoolteaching may have compelled Bell toward the cause for which she lectured: shop girls in the needle trades in New York City, laboring under miserable conditions.⁸ Lizzie Bell's performances were extremely well-received by Eastern urban audiences. The *Boston Post* noted that, with "a full, melodious and finely trained voice, . . . a fine stately person, a graceful manner, . . . she ranks among the best readers that have appeared before a Boston Public."⁹ Her stock lecture for the benefit of the American Woman's Association was entitled *Woman and Her Mission*, wherein "a larger sphere of action was claimed for woman, and her fitness for callings from which she is debarred, defended," according to the *Philadelphia Inquirer*.¹⁰

Not unlike other women's rights activists of the time, Lizzie Bell detoured into Civil War fundraising. Unlike other activists, however, she did not join an existing organization, such as the Sanitary Commission.¹¹ Instead, and consistent with her later involvements, she launched a nationwide tour by herself to benefit orphan daughters of Union soldiers.¹² In the fall of 1865, this effort brought her to California, and to the attention of Joseph W. Stow, who had been appointed by fellow prominent San Francisco businessmen to act as Mrs. Bell's treasurer.¹³

Lizzie Bell remained in California to become Mrs. J.W. Stow in May, 1866, at the age of thirty-six. Joseph Stow was himself a rather recent arrival to San Francisco. His first wife, Mary Isaacs Stow, died soon after the couple relocated there in October, 1863.¹⁴ While Stow achieved business and philanthropic recognition quickly in San Francisco, he nevertheless owed the start of his success to his first wife's considerable assets. Initially, her assets allowed him to participate in buying out his employer in New York in the 1840s.¹⁵ Later, upon Mary Isaacs Stow's death, her estate was divided between Joseph and a son from her first marriage.¹⁶

For the first three years of her marriage, Marietta Stow remained within the domestic sphere. However, unable to set aside her interests in women's rights, she began attending meetings led by suffrage pioneer Elizabeth Schenck in 1869. According to Stow, Mrs. Schenck soon resigned the presidency of the San Francisco Woman Suffrage Association due to illness, and Marietta replaced her.¹⁷ Again, the course of events which followed foreshadowed Stow's later, iconoclastic style of reform.

Stow favored holding a statewide meeting in the capital city of Sacramento while the legislature was in session, in order both to broaden support for the cause beyond San Francisco and to have a suffrage bill introduced. She initiated a lecture series to raise necessary funds and gave the inaugural speech, which was well received.¹⁸ A few days later in mid-November, disagreement arose within the organization regarding the convention's time and place. Stow's ideas were pushed aside in favor of a San Francisco meeting to be assembled as soon as possible. Claiming that such a move was premature and contrary to the purpose of the fundraising, Marietta abruptly left both the presidency and the movement. Mr. Stow arranged to have her resignation letter printed in the local newspapers, wherein Mrs. Stow concluded, "I cannot lend my name and aid to a failure, however worthy the cause."¹⁹

Marietta's second marriage lasted only eight years. To her great misfortune, Marietta was traveling in Europe when Joseph W. Stow passed away at the age of forty-eight on August 11, 1874.²⁰ News of his death was delayed in reaching her,²¹ and by the time she could return to San Francisco, settlement of her late husband's estate was well underway.²² As Marietta Stow would later tell the story again and again, she had become the widow of a prominent and successful businessman, who had been forced by undue

influence to sign a will on his deathbed, naming as executors men with a personal interest in his estate. According to Marietta, these men, with the help of the San Francisco probate bench and bar, pushed the estate into insolvency, thus cheating her out of \$200,000.²³

What really occurred over the next two years and two months must be pieced together from fragmentary and self-serving evidence. It is clear, however, that her experience with the probate of J.W. Stow's estate galvanized Marietta, not only in shaping her specific reform measures, but also in setting her more firmly than ever on the path of women's rights activism generally. Yet it is ironic that, while many nineteenth-century widows did no doubt experience "probate confiscation," Marietta Stow, the very widow who coined that phrase, probably had less confiscated by the system than she was later entitled to claim.²⁴

Mrs. Stow's primary problem did lie in her husband's choice of co-executors. Given the condition of Mr. Stow's estate, the dispositional terms of the will were less significant than the terms controlling the estate settlement, and here Marietta was frozen out. While she claimed that during his lifetime her husband had expressed confidence in her abilities to manage his estate, Marietta was probably mistaken in her belief that, but for the alleged undue influence exercised by these associates, she would have been named executor.²⁵ For as Joseph Stow lay dying with his wife far from his bedside, he must have known that the extensive and complex nature of his financial affairs would require immediate attention.

Joseph Stow had come to California as an agent of an East Coast hardware manufacturing concern. Nevertheless, like many Californians, he was continuously engrossed in a diversity of unconventional schemes,²⁶ including an ore refracting process,²⁷ an attempt to convert petroleum into illuminating gas,²⁸ and a tobacco growing and processing enterprise.²⁹ To complicate matters further, after a failed attempt to negotiate a partnership purchase of his West Coast branch of the hardware business in 1871, Joseph Stow was summarily dismissed from his position, and a nasty litigation resulted.³⁰ At the time of his death, Mr. Stow's suit against the hardware company for \$100,000 remained unresolved, and the ends of his own businesses were both loose and tangled.³¹

Unfortunate, however, was that Mr. Stow appointed as executors men who were intimately involved in almost all these business dealings: William C. Ralston, the colorful founder and officer of the Bank of California; Maurice Dore, mostly known as a consummate auctioneer; and Edward J. Pringle, a prominent attorney better known for his expertise in Mexican land grant law.³² Not only did these three men have a personal stake in the estate administration decisions they would be permitted to make, but in addition, the will permitted the executors to operate without bond, which further increased Marietta's vulnerability. Moreover, there appears to have been little love lost

between Marietta and these men even during J.W. Stow's lifetime. Having believed that they were just using her husband in their overly-risky ventures, she recalled, "I said to him, often and often, '[. . .] These men who lure you [. . .] are not your friends in any worthy sense.'" And one executor in particular she described as "a person who has never risen to first principles, and whose judgment I would not defer to in the most trivial concerns of life. Besides he is my bitter enemy" and "most implacable foe."³³

Yet, regardless of J.W. Stow's motivation for his choice of executors, Marietta was at best mistaken, and at worst disingenuous, in her assessment of her husband's financial worth at his death. Concerned with his reputation almost to the point of obsession, Chamber of Commerce Vice-President J.W. Stow had done his part to mislead his wife, and she had completed the process by denying the obvious.³⁴ Although Joseph was prominent in both business and philanthropic circles, he was never wealthy. His hardware enterprise never appeared to thrive, given local cutthroat competition and a vacillating national economy.³⁵ In fact, thwarted in his attempt to purchase his West Coast branch, he became filled with palpable anguish. He wrote, "my full cup was flooded by this great disappointment, and probably the greatest opportunity of my life for both wealth and position was wrecked."³⁶

In addition, he had lost money on two land ventures as well as the ore refracting attempt,³⁷ had made nothing in proportion to his efforts on the gas illumination try,³⁸ and had chosen another losing proposition with tobacco farming.³⁹ Meanwhile, the couple never purchased a home in San Francisco and instead simply followed the wealthy as they rented in fashionable parts of the city.⁴⁰ Marietta also admitted later to having informally loaned her husband "thousands of dollars" of her separate property.⁴¹

In the process of settling J.W. Stow's estate the executors were entitled to make many decisions that would materially affect Marietta Stow's standard of living. Few of these exercises of discretion worked to her advantage. First, under the guise of taking an inventory, they secured access to the rented home of the Stows while Marietta was still overseas. This set up Marietta's later claim that valuable items and stock certificates were then stolen.⁴² Second, the executors held the power to manage the hardware company lawsuit, which they finally settled for \$26,000.⁴³ However, before even this amount could be collected, the hardware company became insolvent, and the court backed the executors' decision not to pursue the debt further.⁴⁴

Finally, Ralston's Bank of California also benefitted from the settlement of Joseph Stow's estate, especially as to the matter of the \$40,000 indebtedness which the decedent had incurred with the ore refractory failure.⁴⁵ Upon J.W. Stow's death, Ralston's bank called the loan, and, handily, the value of the estate's assets equalled the debt.⁴⁶ Thus, by the close of over two years in probate, Marietta had received less than two thousand dollars for living expenses,⁴⁷ and the executors walked away with a statutory fee of \$1,500.⁴⁸

Not only had the executors the discretion to make decisions affecting Marietta Stow's welfare, but the Probate Court, embodied in Judge Milton H. Myrick, held much sway over her life as well.⁴⁹ California law permitted the court to order a temporary monthly allowance, up to a year,⁵⁰ for the widow to continue living at her accustomed level, even if the estate appeared insolvent. Although Myrick awarded Marietta the allowance, he permitted creditors to contest the award in contradiction to the law;⁵¹ all the while the executors facilitated this contest.⁵² It took three courtroom skirmishes before Stow received the full amount.⁵³ Myrick's award of \$100 per month was hardly sufficient, however, and Stow was reduced to living with her sister or in boarding houses during the probate period.⁵⁴

In fact, Stow encountered difficulties with the entire range of the legal profession. Marietta's attempts to communicate with the executors, their attorney, and the judge, as well as with her *own* attorney, were promptly and demeaningly reported by all to her brother-in-law, another prominent attorney.⁵⁵ Meanwhile, she was never given notice of probate proceedings.⁵⁶ She studied the relevant law on her own, but her attempts at self-representation were firmly rebuffed.⁵⁷ Recognizing the dynamics of a system closing ranks, she mused: "San Francisco lawyers not only protect themselves, as a legal brotherhood, but they also endeavor to protect the profession from any encroachment on their classic borders by laymen; and, above all, do they shut fast the doors of their stronghold to keep women . . . out of their sheepfold."⁵⁸

After a year of this she had experienced enough, and she hired attorneys to sue for removal of the executors.⁵⁹ Marietta rested her suit on a claim of maladministration based on the executors' handling of tobacco company stock that her husband had given her as a Christmas gift, a handling which had depleted estate assets significantly.⁶⁰ However, noting that executors themselves are not ordinarily obliged to assume personal responsibility for the risk of stock volatility, Judge Myrick ruled,

An executor should be removed on some ground of delinquency; not on the ground of error of judgment merely. I am not aware that these executors have committed an error of judgment; [but] if they have . . . when their accounts come on for settlement the accounts can be surcharged if a proper case be made.⁶¹

In the end, the actual terms of J.W. Stow's death-bed will and the events of the probating process may have made little difference on the outcome of the estate settlement. Even if Marietta had been appointed executor, she would have been required to pay off the Bank of California debt, and she most likely would have had to bring suit to collect on the small loan to the fellow tobacco investors. Although she might have settled the hardware company suit sooner,

she most likely could not have obtained prompt payment. Finally, while she might have retained her tobacco company stock, she would then have been required to pay assessments, which would have eliminated any profit. Nevertheless, Marietta felt "hurt, wronged, outraged, insulted," both by the outcome and by the process.⁶² "Call ye this justice?" she railed. "Accursed be such justice, and the framers of such diabolical justice! Bury it and them out of sight, in the lowest Gehenna and the deepest sea of Sodom!"⁶³

Unable to be heard within the legal system, Marietta sought a wider forum. If the law dictated or permitted an unjust outcome, then change the law she would. If the masculine legal system was arrayed against women, then she would empower women, through education and economic opportunity, to fight back. Most widows of an insolvent estate would have been forced to admit defeat, but Marietta Stow was in no ways typical, and in many ways unique. She not only refused to swallow her anger, she enjoyed the means to channel and publicize it. Her well-honed public-speaking skills, not to mention the separate property she had earned thereby, would provide her access to the public sphere that other Victorian women could never imagine.⁶⁴

III. "MEMORANDA OF NOBLE WORK"

Even before her husband's estate was settled, in early 1876 Marietta Stow penned the first edition of *Probate Confiscation, or The Unjust Laws Which Govern Women*.⁶⁵ Although the manifesto railed and rambled, it provided a sweeping indictment of the legal, social, political, and economic treatment of women, especially in California. Stow published and sold the book herself in San Francisco, and soon created a second edition. Yet this was more than just a cathartic exercise. *Probate Confiscation* was meant both to alert women to the pitfalls of widowhood, and to raise funds for Stow's ambitious crusade to reform the probate system of the various states.⁶⁶ Stow prophesized:

[S]ome day [the Probate Court] will be felled to earth by a blow from a *woman's* hand. Then no widows and fatherless children will be driven out of their homes into the barren pastures of the world—suffering the double death of financial ruin and social ostracism. . . . The Probate Court is a high school of prostitution.⁶⁷

She began in San Francisco in January, 1876, giving lectures on women and probate law while writing her book.⁶⁸ Through the sale of four hundred copies of the first edition, she amassed nearly one thousand dollars.⁶⁹ Stow proclaimed that proceeds from this fundraising would go towards establishing a horticulture college for women, a cause for which she easily gained public approval.⁷⁰ Meanwhile, she prepared the text of a proposal which she

entitled, "A Bill for the Protection of Widows and Orphans," and unsuccessfully lobbied the State Senate for its passage.⁷¹

One year later, Stow left San Francisco, taking her crusade eastward to New York, Pennsylvania, Massachusetts, and other New England states, before returning to California in 1880, by way of Washington, D.C., Ohio, Illinois, and Missouri. Along the way, she continued to sell her book, lecture, and lobby legislatures for changes in the states' probate codes.⁷²

Her law reform activities, and the beliefs underpinning them, were highly informed by her personal experiences. The fact that California, at least nominally, was a community property jurisdiction provided a rhetorical space in which Stow could set forth her theories on marriage without risking the taint of radicalism.⁷³ Contrary to the traditional common-law notion of coverture, in which the wife's identity was submerged under the husband's, Stow's view posited the husband and wife as partners, forming the "marriage firm," as she referred to it.⁷⁴ This allowed her then to assert that property acquired during the marriage was denoted "common" because it represented the efforts of both partners. Thus, the wife earns her share of the common property, and her taking upon his death is not a gift, or even a protective measure (as with the status-laden dower), but a right entitled to protection by the law.⁷⁵

Further, because the theory behind the community property system envisioned a categorization of marital assets which did not depend on gender the way the common law system did, Stow could argue, "All I ask is, that widows may be governed by the same laws which govern widowers; no more, no less Then, when the husband dies, the wife can attend to the joint estate of husband and wife, the same as a man does when a woman dies."⁷⁶

However, while "[t]here is any amount of vainglorious boasting in California about the just laws which men have made to govern women," Stow asserted that

[u]nder the law as it now stands, there is no such thing as a partnership relation in the marriage union. The man and woman become one, but that one is the man In spite of our boasted progress and civilization, in wedlock woman is still a slave She cannot use a dollar of the common property which she has helped to earn, without the husband's consent⁷⁷

Stow denounced a system which protected the common property from the wife's debts, gave the husband management and extensive dispositional power over the common property, defined the interest of the wife in the common property as nothing but a mere expectancy, and permitted the husband free rein in his testamentary choice of executor of the common property.⁷⁸

Noting that under California law the whole of the common property is subject to probate upon the death of the husband, while none is subject upon

the death of the wife, Stow laid bare the unstated conclusion that this assumes the widow to be dishonest and unwilling to make good on community debts.⁷⁹ Further, Stow bristled at the traditional explanation for differential treatment, asserting that “protection and subordination are synonymous terms.”⁸⁰ She slyly suggested, “If we are weak, why add to our misfortune by protective and oppressive laws? Take away your protection,—we have had enough and too much of it,—and give us the other extreme for variety.”⁸¹

Yet Stow was aware of a major shortcoming in a marital property system which is based on partnership and time of acquisition rather than status and title. Where a spouse brought significant enough separate property to the marriage yet no common property was acquired during the marriage the survivor could be left with nothing. Stow’s solution was novel: to give the wife a half-ownership in the husband’s separate property but not vice-versa. While this idea appeared inconsistent with her plea for ungendered marital laws, she felt however, that the one-sidedness was temporarily necessary,

because a woman who is self-supporting usually abandons her occupation when she marries, and it is very difficult to resume it when she becomes a widow, especially if she has children to care for. Then again, a woman’s wages are nearly always far below the price paid to men in a like department of labor.

Anticipating by more than a century a debate among modern feminists, she argued, “When women have had the years of experience that men have had, when they have the confidence in their individual strength and capacity, and when the burden of child-bearing and child-rearing is equally divided,—then, and not till then, will the ‘separate property’ rule work well in both cases.”⁸²

The fault for a system that worked such injustice upon women lay in men—the men who made laws that governed women, the men who elected the probate judges, the men who served at the probate bar.⁸³ Thus, topping Stow’s agenda was the need to convince others “that Probate law everywhere, in relation to widows, not only gravitates towards an absolute despotism, but even protects, sustains, and defends a despotism of the most arbitrary and absolute kind.” This was important because

the need of this change must first be seen and appreciated by the people,—the voters of the Republic. To correct legal abuses we must begin at the ballot-box. The voice of the people, and the voice of the people alone, will effect the much-needed reform. Legislators will act when the people desire it, but never before.⁸⁴

Because the probate system was driven by statutory law and often by an elected judiciary, as a legal reformer Stow could not ignore the issue of woman

suffrage. She realized that, although husbands and fathers might agree with the need to reform the probate system, she risked their support by taking her cause to women directly. "If there is a dissenting [woman's] voice raised, then the darling ones are called naughty names, and dubbed Amazonian agitators, hybridous invaders of masculine territory, etc., etc."⁸⁵ Yet, she believed that only when women had the vote and were elected to the legislature would they gain the power necessary to throw off the reins of injustice.⁸⁶

In the shorter run, however, Stow campaigned directly for changes in the probate code, rather than for woman suffrage. To an overwhelming degree, her proposals grew out of her personal situation and experiences, and reflected her philosophy of marriage.⁸⁷ Thus, in her bill presented to the California legislature in January, 1876, "one half of the entire community property, without administration, belongs to the surviving husband or wife, together with the home and all pertaining thereto, . . . and, if they have no children the issue of their marriage, then the entire community property belongs to the surviving husband or wife" The surviving spouse, rather than any executor appointed by will, would have "the sole management, care, control and disposition of [the decedent's half of the] community property, as a surviving partner has the sole power to settle the affairs of a copartnership at the death of one of the partners." Thus, the surviving spouse would be permitted to sell off as much community property "as he or she may deem for the best interest of all parties concerned, or as may be necessary to . . . satisfy all debts . . . against such [decedent]."⁸⁸

When Stow took her cause to the common-law property states of the Northeast, she had to reformulate her agenda; the idea of a "marriage-firm" was of limited use in a legal framework that did not recognize the category of "common property."⁸⁹ Thus, here she concentrated on the belief that to permit an executor to come between a widow and her deceased husband in the management of his estate was to break up a *de facto* marriage-firm. Accordingly, Stow argued that such a practice should be proscribed. Any time a husband had named a third party as executor, Stow's law would provide for the wife to serve as co-executor, absent extenuating circumstances. Further, she pushed for a reformation of the dower right, to require outright ownership of one-third of the husband's estate to pass to the widow as a way to recognize more accurately the contribution of the wife to the marriage.⁹⁰

In Massachusetts, Stow first circulated a petition, gathering the signatures of notables such as William Lloyd Garrison, Ralph Waldo Emerson, Samuel E. Sewell, and Henry W. Longfellow.⁹¹ The supporters of the petition were granted a hearing before the Senate Committee of Probate and Chancery. In preparation Garrison optimistically strategized, "The Legislatures are hard pressed this term. We Suffragists are asking for the whole loaf; the women tax-payers for half a loaf and you [Stow] are praying for a modest slice. I think, as a sort of compromise, they will grant your prayer."⁹² At the

hearing, Stow tried to convince legislators that a widow deserved executory control over her husband's estate, because it was property "she had helped to earn. The assumption that women earn no money during wedlock is vicious."⁹³ Sewell's testimony downplayed the change inherent in the provision, arguing that it would simply make more effective the right of Massachusetts widows to absolute ownership of one-third of the estate.⁹⁴ But, when questioned, Sewell undercut his position by agreeing that a husband was generally a better judge of his wife's ability to act as executor, than was a probate judge.⁹⁵

Stow complained later that during the hearing on her bill the chair of the committee "behaved in a manner so light and indifferent that it almost bordered upon insolence."⁹⁶ She noted that when Sewell and Garrison attempted to speak in favor of the bill, "the technical wording of the bill was taken up and commented upon at great length, and Mr. Sewell was cross-examined . . . upon the legal meaning of the phraseology."⁹⁷ Yet, the *Boston Daily Advertiser* reported that the bill was "duly considered," and failed to pass, because

[t]he probate laws of Massachusetts are [already] liberal and humane in their care of the rights of the living; and where there is any doubt in the administration of an estate, the widow and orphan are very sure of having the probate judge on their side. Moreover, this bill, while it is not called for by any exigency that has arisen or is likely to arise under the laws of this State, would open the way for abuses not now thought of.⁹⁸

On the other hand, the *Evening Transcript* sadly concluded that Stow's petition "was hardly powerful enough to overcome the prejudices of the average lawmaker."⁹⁹

In New York, Stow's task was more difficult, inasmuch as that state continued to enforce the common law definition of dower, consisting of only a one-third life interest in the husband's estate.¹⁰⁰ Outside of a community property jurisdiction, it was highly difficult for Stow to gain support for her assertion that "[m]arriage is a joint partnership, wherein woman is of equal value with man. She contributes half, not a miserable third, to the economy of life."¹⁰¹ A Syracuse newspaper even questioned whether wives should be absolutely entitled to dower: "This assumes that all widows are deserving of this recognition. With fear and trembling we venture to suggest that this is not always a safe presumption. Mrs. Stow asks too much."¹⁰² A Poughkeepsie newspaper reported that the bill's outcome "seems to have been prejudged, and was speedily disposed of in a spirit of antagonism."¹⁰³

Stow's largest effort was saved for the federal legislature. Because probate law traditionally fell under the states' purview, the federal government

exercised such control only over the District of Columbia and the territories. With the support of noted attorney Belva A. Lockwood, Stow took the unprecedented step of proposing a community property system for an Eastern jurisdiction, through the introduction of her Omnibus Marriage Act into Congress.¹⁰⁴ It covered rights upon divorce as well as death.¹⁰⁵ According to Stow, "There is no state in the Union where marriage is a legal business partnership; but the time is ripe for making it such This bill virtually asks that marriage shall become a co-partnership" ¹⁰⁶ Stow's ultimate plan was to have the Act adopted uniformly throughout the nation.¹⁰⁷

In addition to lobbying personally her various bills, Stow claimed to have organized chapters in Boston and New York of a group she christened the "Anti-Probate League." Charlotte Fowler Wells, publisher and noted phrenologist, served as president of the group with Stow as secretary, and resolutions were adopted. However, there is no evidence that the Anti-Probate League was an active reform organization, nor can it be ascertained who else was associated with the group. The League may have existed on paper only.¹⁰⁸

In June, 1880, Marietta Stow concluded her "Probate Pilgrimage" (as she had denoted her crusade in various letters to the *Woman's Journal*), and she returned to San Francisco. She hardly retired from the public view, however. Instead, she began yet another career as the editor of her own newspaper, crusading for the improvement of women's economic and political positions. To that end, she declared herself a candidate for Governor in 1882, and became involved with Belva Lockwood in a presidential campaign in 1884, running for Vice President on the Equal Rights ticket. Throughout these political activities, she did not forget probate reform, which played a part in her campaign proposals.¹⁰⁹

IV. DEFEAT OF A NOBLE CAUSE

For all her efforts to be heard, Marietta Stow failed to accomplish much in the way of probate law reform. On the one hand, Stow's experience appears quite similar to that of the suffrage activists during the same period, wherein high expectations of a victory just around the corner were soon proven unrealistic. On the other hand, what Stow was seeking certainly appears less philosophically radical than woman suffrage, less threatening to the ideology of separate spheres. Her plan was consonant with the married women's property reforms which were gaining popularity at this time, inasmuch as, like these statutes, her reforms could serve as a means of family protection. Specifically, Stow's proposals would protect women from just those that her husband, were he alive, would himself attempt to protect her: attorneys, executors, and a judicial system ready to raid the marital estate.

Stow's failure, then, was hardly inevitable. Probate reforms, domestically-centered as they were, should have been at least as, if not more, attractive to male lawmakers as marital property reforms.¹¹⁰ So, why such limited success? Some reasons are structural; others lie with Stow personally. For the most part, however, this outcome can be explained only by examining Stow's operations within nineteenth-century political culture. The work of two historians of women in politics, Paula Baker and Ellen Carol DuBois, while focused somewhat differently, are central to this task.

Ellen Carol DuBois, in her path-breaking study *Feminism and Suffrage: The Emergence of an Independent Women's Movement in America, 1848-1869*, significantly deepened our understanding of women's political activism in the early to mid-nineteenth century by explaining the transition of women reformers from abolitionism to suffragism. While her story is not one of early success, DuBois portrays women's push for suffrage as a positive contribution to women's larger and longer-term political growth, rather than as an isolated movement of limited actual effect.¹¹¹ Clearly, however, the campaigns for both abolition and suffrage were understood as "political" even within the nineteenth century's masculine model of politics. Thus, DuBois' work, feminist as it is, nevertheless is situated within the paradigm of traditional politics.

Meanwhile, Baker, in her seminal article, *The Domestication of Politics: Women and American Political Society, 1780-1920*, sets out to "suggest a framework for analyzing women and politics and to outline the shape that a narrative history of the subject could take."¹¹² Examining the period before women could vote, Baker constructs a model wherein women are more broadly cast as political actors, not political nonentities, in order to illuminate the effects of women on political society. To do so, Baker posits a more expanded notion of what is meant by politics: "any action, formal or informal, taken to affect the course or behavior of government or the community."¹¹³ Accordingly, she portrays women's political activity as having begun in the home and expanded to include community service and care of dependents. Baker asserts that this "political domesticity provided the basis for a distinct nineteenth-century women's political culture."¹¹⁴

As a part of the story of women and politics in the nineteenth century, an analysis of Stow's efforts at and results in reforming probate law falls somewhere between the paradigms established by these historians. DuBois' work explains Stow's methods, which were clearly taken from the traditional masculine world of nineteenth-century politics, while Baker's work accounts for the cause, Stow's attempt to reform the position of widows regarding marital property. DuBois' work informs Baker's framework of women and politics; the study of Stow's probate-reform crusade allows for both an integration and extension of the understanding of women's role in nineteenth-century politics which DuBois and Baker have provided.

While Marietta Stow's cause was indeed "noble," her failure was in part simply a failure of voice. With her intense anger exceeding the bounds of Victorian notions of proper comportment, Stow chose a voice of agitation rather than of organization. Agitation, a political method which relies on petitioning, writing, speaking, and lobbying, had been popular among abolitionists. Although not directly involved in abolitionism, Stow did enter the world of social reform during this period, when she sought to help New York shopgirls and then Civil War orphans.

According to DuBois, abolitionists were able to use the voice of agitation successfully, "because the people they tried to convince were not the people they sought to liberate."¹¹⁵ Likewise, performing in front of audiences composed of middle-class white members like herself, Stow had experienced some measure of success in agitating for the shopgirls and orphans. So it is not surprising that she would choose these same agitation reform methods years later, both in writing and widely promoting *Probate Confiscation*, and in petitioning and lobbying male lawmakers for adoption of legislation which she had formulated.

DuBois notes, however, that agitation did not serve abolitionists-turned-women's rights campaigners well, inasmuch as "the goal of emancipation ultimately depended on the mobilization of women themselves."¹¹⁶ While Stow sought support from men by appealing to their sensibilities as husbands and fathers who would hate to see their estates wasted by unscrupulous executors, attorneys, and judges, she nevertheless wanted to convince *wives* that their economic future depended on education and law reform.¹¹⁷ The suffragists "learned that they were successful as organizers to the degree they communicated their ideas in terms that their audiences could understand and on which they could act."¹¹⁸ This meant that they had to turn away from the abolitionist mode of expressing ideas as radically as possible.¹¹⁹

Yet, Marietta Stow had difficulty choosing language that would win her male or female supporters. She naturally tended toward hyperbole, and her refusal to submerge her anger appeared unladylike for the time.¹²⁰ While some understood the source of her wrath and, thus, were willing to permit her more leeway, many reviewers of her books and speeches found that the rhetorical style impeded the message.¹²¹ Revealingly, a writer for the *Home Journal* commented that Stow's "tendency to unreasoning tirade against 'the tyrant man,'" was reminiscent of "the earlier stages of the woman's rights movement," and unlike the current "calm and fraternal form of discussion."¹²²

DuBois found that women's rights activists met with more success when they turned away from agitation in favor of a strategy and method of organization. For her part, Marietta Stow did seem to work towards organization for causes, often concocting rather grand schemes, but only if she could take a leadership role. Her initial involvement in the suffrage movement

and the zeal with which she later organized the Social Science Sisterhood in San Francisco during the 1880s seemed to indicate that her probate reform organizational activities were half-hearted.¹²³ By locating the Anti-Probate League in a place of temporary residence and leaving the presidency to another, Stow was too easily able to move on with her solitary agitation without building a solid base of committed reformers. Thus, Stow might have been more successful had she taken her cue from the lessons lately learned by woman suffragists, and rationally and patiently organized supporters towards her goal.

To be sure, however, other issues that dogged Marietta Stow's success were institutional, and would have caused difficulty for any reformer, male or female. Nonetheless, it is fair to say that Stow's gender served to magnify these institutional roadblocks. Although her probate experience took place in a single jurisdiction, she seemed bent from the start on securing nation-wide reform, a task far too ambitious for the time. Statutes and cases defining this area of law were exclusively state-formulated, and this arrangement was thoroughly embedded in American political and legal culture.¹²⁴

Stow wisely did not expend energy developing a strategy to overcome this theoretical but nonetheless real resistance to a single probate system which could govern the entire nation. Instead, she adopted a more astute position that uniform, rather than national, legislation was the one way she could achieve her goal of justice for women nation-wide. Nevertheless, to succeed, Stow would have to receive a hearing in front of numerous lawmaking bodies. Developing appropriate entrees, without the muscle of suffrage, would be exceedingly difficult. Furthermore, the goal of achieving uniform legislation required more than just asking states to tinker with their systems a bit. Two very different systems of marital property were in force in the various states, based on very different theories of marriage and the social position of women.¹²⁵ A great deal of probate law, particularly that relevant to Stow's cause, depended on each theory.

Stow displayed, for a nonlawyer, a fairly sophisticated understanding of the community property system, and was aware of the shortcomings in its California adaptation. She must have appreciated the advantages this system offered to women theoretically, because her uniform proposals were based on the notion of marriage as a partnership and the accumulation of commonly-owned property by the married couple—ideas quite foreign to the common law. Yet to import this system into the common law states of the East would have required not only a tremendous overhaul of those probate systems, but a massive political shift as well.

In addition, because Marietta Stow experienced her difficulties in a community property jurisdiction, residents of common law states were able to differentiate and marginalize her experiences. By the 1870s the community property system was not seen as the reform it had been heralded as twenty

years earlier, even in California.¹²⁶ It was, therefore, quite easy for Stow's eastern audience to assert smugly that, although Stow's travails out in California were unfortunate, such an occurrence could never happen in their own enlightened state.¹²⁷

Some widows in those states knew otherwise, however, as private communication to Stow attests.¹²⁸ Yet this illustrates another task facing Stow, and returns her story to its place within women's political culture of the nineteenth century. Stow needed to develop a constituency for her cause, but doing so would lead to conflicting considerations. Baker observes that "[w]omen's political demands and actions that too closely approached male prerogatives met with resistance."¹²⁹ Petitioning for the ballot clearly fell within this description. But what about probate reform? Stow saw that she could appeal to a man as a husband and father, who would certainly want to avoid having his wife or daughter robbed of "his" estate by collusion between administrator/executor, attorney, and/or judge. Furthermore, Stow would need to appeal to male legislators in order to persuade them to pass her bills. Married women's property reforms were enacted as much from a sense of male self-interest as from any notion of justice due women, and the same could have been true for probate reform.¹³⁰

Even so, Stow believed that, like the cause of woman suffrage, probate reform "depended on the mobilization of women themselves."¹³¹ Without some evidence that women felt that they were being unjustly treated by the probate system, men would be disinclined to upset the status quo. Yet, it was the male political culture, Baker reminds us, which "determined what was public and political, [and] most of those demands by women that fell short of suffrage were seen as private and apolitical."¹³² The task facing Stow, then, was that of mobilizing women for the cause of probate reform without losing a male constituency which would be inclined toward, at the most, protecting these same women.

On the one hand, it would seem that widows, especially those like Stow with many years ahead of them, would be a natural constituency. However, those same widows may have already been too trampled to do battle for a cause which had passed them by.¹³³ In addition, such women, unmarried as they now were, occupied an anomalous position in both law and society such that probate reform would clearly appear to empower, rather than simply protect, them. Thus, mobilizing widows might instead hurt the cause in the eyes of male legislators.

Would wives make a better constituency? Certainly male legislators would be more inclined to enact probate reform as a way of protecting these women, and Stow regularly issued exhortations for married women to educate themselves about the law. Yet, it was more difficult to mobilize married women inasmuch as Stow found that they tended to believe that such an experience as her own could never happen to them. In any event, Stow's

consciousness-raising might first lead these women to discuss the issue with their husbands, who could attempt, through the private action of will-drafting, to protect their wives from the system. Thus, not only might men decide that probate reform demands were really private and apolitical, but women might as well, inasmuch as such demands deviated from a political culture based in community service and care of dependents.

Marietta Stow's program of reforming the probate system might have succeeded had she set about her task within the developed confines of nineteenth-century women's political culture. Moving away from the abolitionist model and toward the suffragist model by taking the time to organize women in support of her cause would have been the necessary first step. However, the suffragist model was less helpful when Stow made her case to male lawmakers. To meet with success, she would have had to frame her demands as an appeal to the protectionist impulses of men rather than as a call for female justice.

But this was impossible for Stow, as her broad vision of the hoped-for place of women in society clashed with the political expedience of painting such a vulnerable characterization of women. She could not simply ask for specific probate reforms as a way to better protect women—she was driven to link them to women's comprehensive legal, economic, political, and social emancipation. In doing so, she failed to leave a legacy of an improved system of laws, but instead she left a legacy of thought, rhetoric, and example which has resonance in a women's movement occurring over one hundred years later.

NOTES

1. Marietta L. Stow, Scrapbook (in University of San Francisco Special Collections) [hereinafter *MLS SCRAPBOOK*].

2. Stow was involved or interested in woman suffrage, female dress reform, the social science movement, and vocational education for women, for example. Believing others were taking credit for her ideas and accomplishments in these areas, she persistently tried to correct the record. Then, in later years, she sought authoritative credentials in order to establish a kindergarten. To that end, she approached Wesleyan University in Illinois (with which she had no obvious earlier contact) for an honorary degree. *MLS SCRAPBOOK*, *supra* note 1, (draft of letter from Marietta L. Stow to Faculty of Wesleyan University (July 10, 1884)). In short, Stow was highly image-conscious.

3. Stow has garnered some interest recently for her journalism career in San Francisco during the early 1880s, and also for her 1884 candidacy for Vice President of the United States with noted attorney Belva Lockwood heading the ticket. *See, e.g.*, SHERILYN C. BENNION, *EQUAL TO THE OCCASION* (1990); ROGER LEVENSON, *WOMEN IN PRINTING: NORTHERN CALIFORNIA, 1857-1890* (1994). In addition, a full length biography was privately published over twenty five years ago. REDA DAVIS, *WOMAN'S REPUBLIC: THE LIFE OF MARIETTA STOW, CO-OPERATOR* (1969). That work, however, largely uncritical, is of limited use for this study. Meanwhile, Stow's *Probate Confiscation: Unjust Laws Which Govern Women* has become widely available due to Arno Press' republication of the third edition, as part of its *Women in America* series of reprints.

Most recently, Stow has received attention from Philip Ethington as part of his treatment of women's political culture in postbellum San Francisco. While Ethington places Stow within the organized women's movement of the city, this article will show that Stow clearly operated independently of the mainstream organized movement. PHILIP J. ETHINGTON, *THE PUBLIC CITY* 328-31 (1995).

4. Stow later reflected, "This has been, essentially, an individual work for the reason [sic] that it was not directly for either of the two great movements, Woman Suffrage or Temperance." Marietta L. Stow, *Second President of the California Woman Suffrage Association*, THE WOMAN'S HERALD OF INDUSTRY, Jan. 1882, at 6 [hereinafter Stow, *Second President*].

However, one other woman (of whose efforts Stow was aware), Jane Plummer Thurston of Portland, Maine, made a small effort to bring the probate system's unjust treatment of women to light. Like Stow, she believed that she herself had been seriously wronged by the system, and like Stow she doggedly sought justice through both the legal and political systems before publishing an account of her travails. Unlike Stow, however, she apparently did not take her cause beyond its personal dimensions. Jane P. Thurston, Address to the Three Departments of the United States and of the State Governments, the Legislature, the Executive, and the Judiciary (1864) (speech given in Portland, Maine).

5. JOAN HOFF, LAW, GENDER, AND INJUSTICE: A LEGAL HISTORY OF U.S. WOMEN 134 (1991). Hoff goes on to note that "the relationship between women's reform groups and changes in intestacy laws and testamentary behavior appears to be stronger in the twentieth century." *Id.*

6. Referring to Stow's probate reform activities, better-known suffrage activist Clara Berwick Colby, in her newspaper, the *Beatrice Express*, perceptively concluded, "[P]robably no woman more thoroughly understands the legal and industrial aspects of the woman suffrage question than does Mrs. Stow." Clara B. Colby, BEATRICE EXPRESS, reprinted in THE WOMAN'S HERALD OF INDUSTRY, Oct. 1881, at 3 (emphasis added). In addition to her probate reform efforts, other causes which Stow came to embrace included woman suffrage and political office-holding, dress reform, food reform, and co-operative living. Her monthly publication, *The Woman's Herald of Industry*, which was published from September, 1881 through February, 1885 (with a change of name to *National Equal Rights* from November, 1884 through February, 1885), provided a forum for Stow to advocate these causes.

7. Stow continually claimed that within a period of less than five years she had married and become a mother, was widowed, and lost her three-year old child to scarlet fever. See, e.g., Marietta L. Stow, FROLIC, Feb. 1890, at 8 (*Frolic* was a short-lived, quarterly Oakland publication edited by Stow and her sister, S. Gertrude Smyth). In fact, Stow was probably divorced from her first husband. See Index to Appearance Docket for Common Pleas Court, Cuyahoga County, Ohio, 1842-1861, entry #26-84, Mary L. Bell v. Ezekiel F. Bell, Action for Divorce, filed May 26, 1857. Although the divorce records are not entirely conclusive, a search of other public records has revealed no information regarding the death of an E.F. Bell (as Stow referred to him) during this period, or later. Letter from Dr. Judith G. Cetina, Manager, The Cuyahoga County Archives, to author (Aug. 6, 1993). Further supporting the author's belief is an allegorical chapter of *Probate Confiscation* entitled, "A Father's Rights," wherein Stow recounts the story of a "friend" whose daughter experienced child custody problems which were mooted by the death of the grandson. Finally, Stow's law reform efforts often included the plight of divorced, as well as widowed, women. Given the high degree to which Stow translated her personal experiences into political causes, a divorce here would explain her later concern for divorced women under the law.

Furthermore, it was not uncommon for divorced women during this period to make such a claim of widowhood, especially if the claim was difficult to corroborate. See Barbara A. Babcock, *Reconstructing the Person: The Case of Clara Shorrledge Foltz*, in REVEALING LIVES: AUTOBIOGRAPHY, BIOGRAPHY, AND GENDER (Susan G. Bell & Marilyn Yalom eds., 1990). Considering Stow's penchant for image control as well as her geographic mobility, it is not surprising that she would avail herself of this ruse. This reinforces the need, in studying Stow, to take a critical view of her claims.

8. DAVIS, *supra* note 3, at 12.

9. MLS SCRAPBOOK, *supra* note 1, (clipping from an unknown newspaper, approx. 1862).

10. MLS SCRAPBOOK, *supra* note 1, (clipping from *Lecture by a Lady*, Feb. 1860).

11. The Sanitary Commission provided a means, during the Civil War, for Northern women to participate in national affairs, by fusing public service and domestic ideals. Within this organization, women surpassed men as fund-raisers and supply collectors, greatly contributing to the Union cause. NANCY WOLOCH, WOMEN AND THE AMERICAN EXPERIENCE 223 (2d ed. 1994).

12. MLS SCRAPBOOK, *supra* note 1, (*A Worthy Mission*, clipping from Cincinnati newspaper, approximately some time after Feb. 5, 1864).

13. MLS SCRAPBOOK, *supra* note 1, (*A Noble Charity in Behalf of Soldiers' Orphan Daughters*, clipping from Stockton newspaper (n.d.)). Although she collected almost \$8,000 in California alone, Mrs. Bell was forced to abandon her cause, because states individually were establishing such orphans' homes. Marietta

L. Stow, FROLIC, Feb. 1890, at 8. Because of her association with J.W. Stow, who happened to be president of the Ladies Protective and Relief Society, the money she had raised was left with that organization instead. DAVIS, *supra* note 3, at 9-10.

14. J. W. Stow, FROLIC, Aug. 1889, at 8; MLS SCRAPBOOK, *supra* note 1, (letter from J.W. Stow (May 15, 1864) (addressee unknown)). Marietta Stow constructed her Scrapbook using a letterbook which had belonged to J.W. Stow almost forty years earlier. Copies of two letters were contained in that book, written in 1864, detailing Mary Stow's death and the extreme anguish J.W. Stow felt even over a year later. Marietta pasted newspaper clippings over many of the pages of these letters; however, they remained mostly readable from the reverse side.

15. Mary Isaacs Stow, who was apparently somewhat older than her second husband, brought to the marriage \$200,000 and two young sons. J. W. Stow, FROLIC, Aug., 1889, at 8.

16. MLS SCRAPBOOK, *supra* note 1, (letter from Joseph W. Stow (May 15, 1864)). Apparently, only one son, William, survived his mother. He and his wife were visiting San Francisco when Mary Stow died, whereupon they remained in the city. William joined J.W. Stow's business, quite possibly serving as a confidential secretary for many years. *Id.*; see also, Stow letters (August 30, 1870 to September 2, 1873) (available in California State University Library, Sacramento, Rare Book Collection) [hereinafter JWS LETTERS]; J.W. Stow Collection, The Huntington Library [hereinafter JWS COLLECTION]. The relationship between J.W. Stow and his stepson was unusually close, as he wrote of William and his stepdaughter-in-law upon Mary's death: "Children could not cleave to a father more closely or affectionately than do these to me, doing all they can to soothe my grief and mitigate my sorrows." MLS SCRAPBOOK, *supra* note 1, (letter from Joseph W. Stow (May 15, 1864)).

17. Stow, *Second President*, *supra* note 4, at 5-6. While helpful, this article suffers from the type of inaccuracies which can creep into a recollection many years after the fact, especially by someone who was prone to inflate her own role. The organization should have been identified as the San Francisco Woman Suffrage Association (SFWSA), not the California Woman Suffrage Association to which Stow refers, as the state-wide group had yet to be formed. In addition, some records of the time show Stow serving as the chair of meetings of the SFWSA but do not designate her as president of the group. See, e.g., Penelope, *Woman Suffrage Association*, SATURDAY EVENING MERCURY (San Francisco), Nov. 11, 1869, at 1.

18. Stow, *Second President*, *supra* note 4, at 5.; Mrs. J.W. Stowe's [sic] *Lecture*, SATURDAY EVENING MERCURY (San Francisco), Nov. 6, 1869, at 1; MLS SCRAPBOOK, *supra* note 1, (clipping from *Women's Work*, 3 HISTORY OF WOMAN SUFFRAGE 753 (Elizabeth C. Stanton et al. eds., 1881)).

19. *Resignation of President of the Woman's Suffrage Association*, ALTA (San Francisco), Nov. 23, 1869, reprinted in DAVIS, *supra* note 3, at 208; Stow, *Second President*, *supra* note 4, at 5; MLS SCRAPBOOK, *supra* note 1, (Mrs. J.W. Stow and the Woman's Suffrage Association—*She Withdraws from the Concern*, clipping from THE SAN FRANCISCO BULLETIN (n.d.)). See also *Woman's Suffrage Convention*, PIONEER, Dec. 4, 1869, at 1, hinting at the dispute by arguing in favor of a state-wide convention where a state organization would be formed, which in turn would continue the work of organizing county auxiliaries. Stow believed that a state-wide convention should not be held until enough local organizations had already been formed. Laura deForce Gordon, another leading woman's rights activist, had been canvassing the state at the time helping local organizations get started. PIONEER, *supra passim*.

Although she claimed to be taking the high road by resigning over the perceived misuse of funds, Stow more likely was upset that her own plans were being thwarted. Even though she had assumed leadership of an already-established organization, the lecture series appeared to have been instituted and sustained almost wholly by Stow and her sister, S. Gertrude Smyth. Further, she had planned for her husband, who was only a recent convert to the cause, to speak in favor of the suffrage bill before the legislature. Stow, *Second President*, *supra* note 4, at 5. Davis suggests that Stow's Unitarian affiliation may have played a part in her withdrawal from the movement. According to Davis, the Eastern-based National Woman Suffrage Association/American Woman Suffrage Association split manifested itself in California as a split between Spiritualists and Unitarians, respectively, with the Unitarians withdrawing from the San Francisco organization. DAVIS, *supra* note 3, at 208-09.

20. MLS SCRAPBOOK, *supra* note 1, (notation written by Marietta Stow next to clipping entitled *In Memory of J. W. Stow*).

21. MARIETTA L. STOW, PROBATE CONFISCATION: UNJUST LAWS WHICH GOVERN WOMEN (3d ed. 1878), at 194 [hereinafter STOW, PROBATE CONFISCATION].

22. DAVIS, *supra* note 3, at 27.

23. STOW, PROBATE CONFISCATION, *supra* note 21, *passim*.

24. No previous source referring to this period of Marietta Stow's life has examined the veracity of this claim. All have simply accepted Stow's account at face value.

25. STOW, PROBATE CONFISCATION, *supra* note 21, at 53. There is no evidence to indicate that Joseph Stow had ever executed any other will during his marriage to Marietta.

26. Marietta had strenuously disapproved of these sidelines, claiming after his death, "Mr. Stow would have been alive to-day, and a rich man, . . . if he had attended to his legitimate business as manager of the Russell and Erwin Manufacturing Company, and not been led off by men who coined the products of his brain into money for their own aggrandizement.

"I said to him often and often, '[. . .] You are not physically strong. You should not do one other thing besides the management of your legitimate business. You will be far richer in the end if you listen to me [. . .]'. STOW, PROBATE CONFISCATION, *supra* note 21, at 130-31. Apparently J.W. Stow's friends disagreed: "I am urged to retire from hardware and do other and better things." JWS LETTERS, *supra* note 16, (letter from J.W. Stow to W.E. Russell (Oct. 4, 1871)).

27. STOW, PROBATE CONFISCATION, *supra* note 21, at 128; JWS COLLECTION, *supra* note 16 *passim*. These letters, from July to September, 1865, mostly addressed to J.W. Stow, were from agents sent to the mining regions to scout opportunities.

28. STOW, PROBATE CONFISCATION, *supra* note 21, at 128. This venture brought Stow and his associates into direct and furious competition with established coal-gas concerns. See J.W. Stow, *Reply to the San Francisco Gas Company's Circular About Petroleum Gas* (1871) (on file at the Bancroft Library, Berkeley).

29. STOW, PROBATE CONFISCATION, *supra* note 21, at 274-89, *passim*.

30. Mr. Stow's contract had included compensation of \$500, as well as stock options worth \$100,000. J.W. Stow, FROLIC, Aug. 1889, at 8; JWS LETTERS, *supra* note 16, (letter from J.W. Stow to John G. Vose (Nov. 23, 1871)). In June, 1871, the principals began to talk of shutting down the unprofitable San Francisco warehouse. Mr. Stow attempted to put together a deal with his associates, to purchase this as well as other local hardware concerns, in order to establish an independent firm. JWS LETTERS, *supra* note 16, (letters from J.W. Stow to W.E. Russell (July 10, 1871 and Aug. 21, 1871); letter from J.W. Stow to Tibbets (Aug. 18, 1871)). But the delicate plan disintegrated due to intentional neglect by the Eastern principals. JWS LETTERS, *supra* note 16, (letter from J.W. Stow to W.E. Russell (Oct. 4, 1871)). To add insult to injury, the parent firm then not only shut down the San Francisco branch, but also claimed that Joseph Stow had mismanaged the business, thereby allowing it to cancel the stock options due to breach of contract. JWS LETTERS, *supra* note 16, (letters from J.W. Stow to Tibbets (Dec. 2, 1871); letter from J.W. Stow to John G. Vose (Dec. 14, 1871)).

J.W. Stow's difficulties are further detailed in a book of certified copies of defense exhibits from the resultant case, *Stow v. Russell & Erwin*, on file at California Historical Society Library, San Francisco [hereinafter *Stow v. R&E* Defense Exhibits].

31. STOW, PROBATE CONFISCATION, *supra* note 21, at 354. According to the Hon. Milton H. Myrick, Probate Judge of San Francisco, who came to be Marietta Stow's nemesis, "the executors had the fag-ends of disastrous business adventures from which to weave together affairs in order to pay the creditors and save something for the heirs" *Estate of J. W. Stow*, 1 MYRICK'S REPORTS OF CASES IN THE PROBATE COURT OF THE CITY AND COUNTY OF SAN FRANCISCO 97, 98 (Nov. 1875) [hereinafter 1 MYRICK].

32. Ralston had been a partner in the ore refracting process and had lost a significant sum with its failure. At the same time, Mr. Stow's loss was manifested by a \$400,000 debt to Ralston's bank. STOW, PROBATE CONFISCATION, *supra* note 21, at 128. In addition, Ralston had purchased the tobacco company; Mr. Stow was installed as president and made a shareholder, while Dore was also a principal. Ralston had also been the primary investor in the petroleum-gas company, as well as an intended investor in the hardware takeover. *Id.* at 128; JWS LETTERS, *supra* note 16, (letters from J.W. Stow to W.E. Russell (Aug. 8, 1871 and Oct. 4, 1871)). As a significant player in California's post-bellum financial, mining, and real estate industries, Ralston has been the subject of numerous biographies, including JULIAN DANA, *THE MAN WHO BUILT SAN FRANCISCO* (1936); DAVID LAVENDER, *NOTHING SEEMED IMPOSSIBLE: WILLIAM C. RALSTON AND EARLY SAN FRANCISCO* (1975); and CECIL G. TILTON, *WILLIAM CHAPMAN RALSTON: COURAGEOUS BUILDER* (1935). Ralston's business partnerships with J.W. Stow rate almost no mention in these works, indicating their minor status in Ralston's high-stakes life. Neither is J.W. Stow's presence to be found in

Ralston's papers, in the Bank of California Collection, Bancroft Library, Berkeley. In fact, all this makes J.W. Stow appear as little more than a "hanger-on" in the upper tiers of San Francisco's business community.

Pringle's career is noted in OSCAR T. SHUCK, *HISTORY OF THE BENCH AND BAR OF CALIFORNIA* 413-14 (1901). Pringle had been representing Mr. Stow in his suit against the hardware company and was another loser in the failed ore refracting business. STOW, *PROBATE CONFISCATION*, *supra* note 21, at 128, 355; JWS COLLECTION, *supra* note 16, (letter from Joseph Lee to J.W. Stow (Aug. 14, 1865)); JWS Letters, *supra* note 16, (letter from J.W. Stow to Mr. Day (Feb. 3, 1873)). Moreover, Pringle had provided legal services for every business venture in which J.W. Stow had been involved. DAVIS, *supra* note 3, at 49.

33. STOW, *PROBATE CONFISCATION*, *supra* note 21, at 51, 53, 131. Referring to this person as "an employee of my husband," Marietta was probably speaking of Dore. *Id.* at 53. As executors, these men became "Mr. Stow's Caesar friends." *Id.* at 91. However, Davis noted that history has favored these men with good reputations, especially Dore, who, upon Ralston's death, voluntarily surrendered title to lands which actually had belonged to Ralston, and thus, "got a tremendous reputation for honesty." DAVIS, *supra* note 3, at 19.

34. JWS LETTERS, *supra* note 16, (letter from J.W. Stow to W.E. Russell (Aug. 21, 1871); letter from J.W. Stow to Loughton (Oct. 28, 1871); letter from J.W. Stow to Tibbets (Nov. 23, 1871); letter from J.W. Stow to W.C. Ralston (July 28, 1873)); Resolution, Chamber of Commerce of San Francisco, *reprinted in J.W. Stow*, FROLIC, Aug. 1889, at 8. Marietta later asserted that before she left for Europe, Joseph had claimed he was debt-free and worth \$200,000. However, although Joseph told her he had paid off the debt from the ore refractory failure with money he had received from the sale of the gas works, his business correspondence instead indicates that he suffered a financial loss on the gas works transaction. STOW, *PROBATE CONFISCATION*, *supra* note 21, at 130; JWS LETTERS, *supra* note 16, (letter from J.W. Stow to W.C. Ralston, (July 28, 1873)). Further, J.W. Stow had a reputation as a noted philanthropist, gained through what was probably excessive generosity to charitable causes. STOW, *PROBATE CONFISCATION*, *supra* note 21, at 52; *Stow v. R&E* Defense Exhibits, *supra* note 30, (listing of J.W. Stow's charitable donations, Feb. 5, 1867 to Nov. 2, 1871).

35. JWS LETTERS, *supra* note 16, (letter from J.W. Stow to J. Stratton, (Feb. 23, 1871); letter from J.W. Stow to Loughton (Feb. 28, 1871); letter from J.W. Stow entitled "My dear Dr." (Feb. 28, 1871)); DAVIS, *supra* note 3, at 28.

36. JWS LETTERS, *supra* note 16, (letter from J.W. Stow to W.E. Russell, (Oct. 4, 1871)); *see also* JWS LETTERS, *supra* note 16, (letter from J.W. Stow to Loughton (Oct. 28, 1871) ("the best chance for wealth and position I have ever had")).

37. DAVIS, *supra* note 3, at 15, 19.

38. STOW, *PROBATE CONFISCATION*, *supra* note 21, at 130. Ralston had invested some \$400,000 in the petroleum-gas venture. The company was sold to the San Francisco Gas Co. for \$500,000 one day before the works exploded, injuring at least one person and potentially exposing the former business to liability. *Id.* at 128-29; JWS LETTERS, *supra* note 16, (letter from J.W. Stow to W.C. Ralston (July 28, 1873)). Marietta had referred to this venture as a "*fiasco*" and a "vexatious enterprise," STOW, *PROBATE CONFISCATION*, *supra* note 21, at 128-29, and even her husband admitted "the responsibility of this work has cost me infinite labor and many sleepless nights." JWS LETTERS, *supra* note 16, (letter from J.W. Stow to W.C. Ralston (Oct. 13, 1871)). In the end, J.W. Stow concluded that his loss here was "the worse I ever got," both financially and in business standing. JWS LETTERS, *supra* note 16, (letter from J.W. Stow to W.C. Ralston (July 28, 1873)).

39. This debacle was chronicled a few years later in JOHN S. HITTELL, *THE COMMERCE AND INDUSTRIES OF THE PACIFIC* (1882). Hittell noted that one J.D. Culp began cultivating tobacco in 1871, and then succeeded in interesting "several capitalists" to invest in the venture. A company was formed to raise and cure tobacco, with the hopes of driving Cuban cigars from the American market. To that end one thousand acres were planted, a factory and warehouses were erected, and J.D. Culp's "ingenious California patent . . . for curing the weed by processes of successive drying and sweating periods" was purchased by Mr. Stow and his associates. However, according to Hittell, the company "rushed into business with excessive confidence; and by inexperience and incompetency in cultivation and curing, by mistakes in giving credit for its products, and perhaps, by defects of its processes, lost \$1,000,000." *Id.* at 284-85, 699. Furthermore, financial arrangements for this venture were controverted from the start. JWS LETTERS, *supra* note 16, (letter from J.W. Stow to W.L. Hoover (July 24, 1872)). This venture was on-going at Stow's death, and proved a further drain on the assets of the estate.

40. DAVIS, *supra* note 3, at 18.

41. STOW, PROBATE CONFISCATION, *supra* note 21, at 354.

42. STOW, PROBATE CONFISCATION, *supra* note 21, at 61; DAVIS, *supra* note 3, at 29. The executors were permitted to sequester items of value which might need to be sold to raise cash for debts, yet they could have taken sentimental value into account in their choices. Marietta Stow published the "Inventory and Appraisement," which was filed on Dec. 17, 1874, in her first edition of PROBATE CONFISCATION 250-51 (1876).

43. This sum represented a net loss to the estate considering the legal fees which had been invested in it over the years. According to Marietta, less than a year before he died, J.W. Stow had been offered \$40,000 to settle the case. However, he was advised against accepting, by both Pringle and Ralston. Joseph Stow had expended \$20,000 to prosecute the suit, which, according to Marietta, after his death "any one, with half an eye, could have seen at a glance was better to settle at once upon almost any terms." STOW, PROBATE CONFISCATION, *supra* note 21, at 357. Instead, "the suit was kept brewing with two lawyers here on big pay, and one in New York" for a year and a half more. *Id.* at 356.

44. 1 MYRICK, *supra* note 31, at 98. Pringle handled another lawsuit in a similar fashion. Mr. Stow had lent two fellow tobacco venture associates a small sum. Interestingly, the executors claimed they were unable to collect on this rather minor debt from their own business associates, and instead filed a lawsuit against them a considerable time after Mr. Stow's death. Needless to say, any value in the suit, which remained unresolved 2½ years after his death, was eaten up in its prosecution by Pringle. STOW, PROBATE CONFISCATION, *supra* note 21, at 356. In her book, Marietta railed:

I see not the shadow of a reason, if there had been the smallest desire on the part of the executors, why the estate should not have been closed up within the year. . . . Who has been benefitted? Lawyers and courts; while the estate has melted like snow before the sun. *And this is justice!* *Id.* at 357.

45. Although Joseph had told Marietta that the loan was paid off with proceeds from the sale of the petroleum-gas company, this must have been untrue. STOW, PROBATE CONFISCATION, *supra* note 21, at 128-30. Also was the matter of a \$2,000 draft which Joseph had sent to Marietta upon her request to defray expenses while she was in Europe. At the time, Marietta believed that Joseph was preparing to join her; in fact, he was on his deathbed. J.W. Stow, FROLIC, Aug. 1889, at 9. She returned to learn that only a letter of credit had been issued by the Bank, thus allowing the executors to charge the amount of the draft against Marietta's share of the estate. STOW, PROBATE CONFISCATION, *supra* note 21, at 51-52. Alternatively, Marietta claimed that the Bank owed Joseph Stow several thousand dollars for services rendered, against which the letter should have been charged. *Id.* at 52, 58.

46. STOW, PROBATE CONFISCATION, *supra* note 21, at 354. Marietta was truly the loser in Joseph Stow having contracted this debt, as Pringle admitted to the Probate Court that, given Stow's personal value to the bank, the loan was called only due to his death. *Id.* at 130, 354.

47. *Id.* at 52.

48. *Id.* at 354. While the executors were able to use their position to minimize the impact of Joseph Stow's death on their own businesses, the statutory fees themselves did not represent an over-compensation given the efforts required to close the estate.

49. Myrick was elected to the office of Probate Judge in 1871, serving two four-year terms. After the new State Constitution brought probate adjudication into the Superior Court in 1879, Myrick was elected to the California Supreme Court. SHUCK, *supra* note 32, at 729. In spite of (or maybe because of) such a distinguished reputation, Marietta saved particular wrath for Myrick, devoting an entire chapter of *Probate Confiscation* to his excoriation. Adopting a biblical style in her chapter "Philistines v. Widows," she satirically described the "mighty Myrick the Just." STOW, PROBATE CONFISCATION, *supra* note 21, at 191-93.

50. STOW, PROBATE CONFISCATION, *supra* note 21, at 52.

51. *Id.* at 115.

52. *Id.* at 91. It was Ralston's Bank of California which protested the payment of Stow's allowance. *Id.* at 59.

53. *Id.* at 115-16. Her own lawyer was hardly interested in advocating her cause, asserting that, "Mrs. Stow will have to employ someone else: she is in too great a *hurry* about her allowance." *Id.* at 118. Stow was forced to represent herself at the last hearing. *Id.* at 115-16.

54. *Id.* at 51; DAVIS, *supra* note 3, at 30.

55. DAVIS, *supra* note 3, at 30. Smyth was the author of a well-known and well-regarded treatise, *HOMESTEAD AND EXEMPTIONS* (1875), the first to be published on the subject. Ironically, this treatise dealt with a family protection mechanism becoming popular in the late nineteenth century, of which Stow was foreclosed from taking advantage because she and her husband had chosen to rent rather than purchase a home. As for Smyth, Stow remarked, "brothers-in-law are almost as bad, if they chance to be of the legal cloth, as mothers-in-law." STOW, *PROBATE CONFISCATION*, *supra* note 21, at 70-71.

56. STOW, *PROBATE CONFISCATION*, *supra* note 21, at 355.

57. *Id.* at 88 (describing her studies), 118 (describing male lawyers closing ranks to protect their fraternity).

58. *Id.* at 118.

59. 1 MYRICK, *supra* note 31, at 97. Representing the executors were Edward J. Pringle and Samuel M. Wilson, both profiled in SHUCK, *supra* note 32, at 543, 566. Marietta Stow's attorneys, listed only as "Hamilton and Heath," are nowhere noted in that prominent listing. Interestingly, although she continually maintained that her husband had signed his will under undue influence, there is no indication that she ever tried to have the executors removed or the will invalidated on that basis, even after Judge Myrick himself suggested that option to her. STOW, *PROBATE CONFISCATION*, *supra* note 21, at 60.

60. The stock had been assessed numerous times after Joseph W. Stow's death. At first the estate was charged the assessments, which helped these executors and their three associates continue operating the business. However, the executors refused to pay later assessments and then sold the stock for only the assessed amount. 1 MYRICK, *supra* note 31, at 98; DAVIS, *supra* note 3, at 29; STOW, *PROBATE CONFISCATION*, *supra* note 21, at 274-78. Marietta was charged \$5,000 in assessments, even before losing the stock, causing her to remark, "I feel most bitterly . . . for it has gone to further enrich the executors of my estate." STOW, *PROBATE CONFISCATION*, *supra* note 21, at 289. The stock was then repurchased by the closely-held tobacco company. Marietta accused Dore: "'You took the price of assessments on his stock out of my estate when you knew what the end was to be If the estate had been closed, as it should have been, a year and a half ago, the amount of the assessments paid on Mr. Stow's stock would have remained for the benefit of the estate instead of the Tobacco Company.'" *Id.* at 290. Just after this, a fire destroyed the assets of the ailing business, allowing the five owners to collect on a \$63,000 insurance policy. *Id.* at 278.

61. 1 MYRICK, *supra* note 31, at 99. There was not even a mention by the judge of the fact that Dore and Ralston were principals in this tobacco company, which allowed Myrick to ignore the issue of breach of fiduciary duty to the widow through indirect self-dealing.

Marietta also claimed that the executors had failed to provide her with the required accounting during the previous year and a half. She had already been rebuffed during informal hearings in the judge's chambers; now Myrick ruled for the record that, although there was an admitted lack of timeliness, the executors would be excused as they had done the best they could. 1 MYRICK, *supra* note 31, at 98; STOW, *PROBATE CONFISCATION*, *supra* note 21, at 131-32. Almost two and a half years later still no accounting had been entered on the record. Marietta railed, "Is this LAW? Is this JUSTICE? Men call it justice: I don't." STOW, *PROBATE CONFISCATION*, *supra* note 21, at 350.

62. STOW, *PROBATE CONFISCATION*, *supra* note 21, at 5.

63. *Id.* at 6.

64. Much as she fostered a view of herself as the poverty-stricken widow of Joseph W. Stow, before this marriage Marietta had accumulated a fair amount of separate real property. She owned two lots in San Francisco, worth twenty-five to thirty thousand dollars, and was part owner of three lots in Oakland, which were worth little. DAVIS, *supra* note 3, at 28; STOW, *PROBATE CONFISCATION*, *supra* note 21, at 293. As one writer, probably Lucy Stone, noted, "If every wronged widow had the means to write a book and give all the facts to the public, the very exposure would go far to correct existing abuses." MLS SCRAPBOOK, *supra* note 1, (clipping from 7 WOMAN'S JOURNAL).

65. STOW, *PROBATE CONFISCATION*, *supra* note 21, at 5-6.

66. STOW, PROBATE CONFISCATION, *supra* note 21, at 349; *see also* DAVIS, *supra* note 3, at 29.

67. DAVIS, *supra* note 3, at 38.

68. MLS SCRAPBOOK, *supra* note 1, (*Our Probate Law. Proposed Reforms—Letter from Mrs. Stow*, clipping from SAN FRANCISCO EVENING POST, June 16, 1880).

69. STOW, PROBATE CONFISCATION, *supra* note 21, at 293.

70. MLS SCRAPBOOK, *supra* note 1, (clipping from SAN FRANCISCO EVENING POST, Dec. 30, 1876); HORTICULTURE COLLEGE FOR WOMEN, CIRCULAR (on file at California State Library, Sacramento). Although Stow had been involved, over fifteen years earlier in New York, in establishing a home for poor, working-class girls, she apparently had done so with the detachment typical of middle-class philanthropists. Yet with her probate experience, Stow reflected, “[p]erhaps the scathing lesson which I have been forced to learn, so much against my will, may prove a salutary one; for I know how to sympathize with the poor as I never could without just such an experience.” STOW, PROBATE CONFISCATION, *supra* note 21, at 294. Specifically, Stow had attempted to find temporary work in San Francisco, after the Probate Court had cut off her one-year support, but could not. While this helped her to see the connection between women’s legal and economic status, and demonstrated the need to work for improving both, a dark side emerged from her experience. She wrote, “every avocation, with a few exceptions, open to women is invaded by the Chinese; and they reduce the price paid for labor to a minimum low standard, or to almost starvation prices.” *Id.* Unfortunately Stow was not alone among California women activists in her prejudice, and she remained anti-Chinese after she returned to the Bay Area in the 1880s. Mrs. J.W. Stow, *Independent Candidate for Governor of California*, THE WOMAN’S HERALD OF INDUSTRY, July 1882, at 1.

71. STOW, PROBATE CONFISCATION, *supra* note 21, at 13-20; MLS SCRAPBOOK, *supra* note 1, (*The Intestate Laws: Text of a New Bill to be Presented to the Legislature*, clipping from SAN FRANCISCO CHRONICLE, Jan. 8, 1876). Although this newspaper considered her proposal “radical,” her crusade met initially with fairly widespread approval. MLS SCRAPBOOK, *supra* note 1, (clipping from THE EVENING EXPRESS (Los Angeles), June 8, 1876; clipping from SAN FRANCISCO EVENING POST, Dec. 30, 1876; clipping from SACRAMENTO DAILY BEE, Mar. 31, 1877).

72. MLS SCRAPBOOK, *supra* note 1, (*The Rights of Widows*, clipping from EVENING TRANSCRIPT (Boston), Feb. 6, 1878; clipping from EASTERN ARGUS (Portland, Maine) (no date); *My Probate Pilgrimage*, clipping from WOMAN’S JOURNAL, April 20, 1878; *Suffrage Meeting*, clipping from THE DAILY TIMES (Hartford, Conn.), Nov. 27, 1877; clipping from EVENING BULLETIN (Philadelphia), Aug. 22, 1878; *A Plea for Women*, clipping from THE DAILY PRESS (Poughkeepsie, N.Y.), Feb. 21, 1879; *A Proposed Marriage Property Act*, clipping from THE CINCINNATI COMMERCIAL, Dec. 12, 1879; *Probate Laws*, clipping from ST. LOUIS DISPATCH, Mar. 29, 1880). *Probate Confiscation* was ultimately published in four editions, and was complemented by *Probate Chaff*, a more gossipy tome. MARIETTA L. STOW, PROBATE CHAFF; OR BEAUTIFUL PROBATE; OR THREE YEARS PROBATING IN SAN FRANCISCO (1879). In order to garner the myriad reviews she did, Stow would send ahead or deliver a copy of her book, gratis, to local newspapers. During her “Probate Pilgrimage” she had bills introduced in six state legislatures and had a bill before the Forty-sixth Congress which would have governed the District of Columbia as well as the territories. According to Stow, the latter bill “was published entire in all the Washington dailies as the most important bill before the Forty-sixth Congress.” MLS SCRAPBOOK, *supra* note 1, (*Our Probate Laws. Proposed Reforms—Letter from Mrs. J.W. Stow*, clipping from SAN FRANCISCO EVENING POST, June 16, 1880).

73. Susan W. Prager, *Persistence of Separate Property Concepts in California’s Community Property System, 1849-1975*, 24 UCLA L. REV. 1 (1976). Although Prager argues that by the later part of the nineteenth century, California’s marital property system was *de facto* common law in its functioning, the rhetorical value of the community property system to women’s rights reformers ought not to be ignored. Unlike the Eastern common law states, which were patching their gendered systems with gendered Married Women’s Property Acts, California at least had the theoretical framework on which an equal, nongendered system could be constructed. Furthermore, reformers could point to the inconsistency of California’s enactment of gendered measures. Donna Schuele, *Community Property Law and the Politics of Married Women’s Rights in Nineteenth-Century California*, 7 W. LEGAL HIST. 245 (1994).

74. STOW, PROBATE CONFISCATION, *supra* note 21, at 18, 72, 179, 249.

75. “By the wife’s efforts and economy she has, most likely, contributed her half toward the family estate.” *Id.* at 85. Yet Stow pushed the marriage-firm idea beyond the bounds of partnership and into the realm of quasi-contract, as she argued further that wives should be treated as creditors of the husband’s estate,

for services rendered as wife, domestic, nurse, and housekeeper. This would potentially allow a wife to take even from an insolvent estate, as Stow herself would like to have done. *Id.* at 26.

76. *Id.* at 353, 110.

77. *Id.* at 64, 232.

78. *Id.* at 65-84. Stow maintained that protection of the community from the wife's debts was illusory. "This is done solely to prevent a wife from entering into any business that would make her as independent as the husband. Men don't like financially independent wives." *Id.* at 73.

79. *Id.* at 39, 18.

80. *Id.* at 98. She ironically inquired, "Why are not widowers probated? Surely, what is such sublime sauce for the goose ought to be fine garnish for the gander. Why these one-sided laws, which refuse their vulture protection to men?" *Id.* at 39.

81. *Id.* at 97-98.

82. *Id.* at 226-27. Today's debate has occurred in the area of divorce law reform, as no-fault divorce, although calling for equal treatment of spouses, is coming under attack for imposing a differential outcome on divorcing women who had participated in traditional marriages. See LENORE WEITZMAN, *THE DIVORCE REVOLUTION* (1985).

83. STOW, PROBATE CONFISCATION, *supra* note 21, at 109, 83, 78-79. For the probate lawyers she saved particular wrath, referring to them as "despicable leeches, hanging by their eyelids to the outer walls of this hideous Golgotha." *Id.* at 78-79.

84. *Id.* at 357-58.

85. *Id.* at 182.

86. *Id.* at 83, 142.

87. For example, she wrote, "These masculine laws are arranged in hostile attitude against *all* women, but more particularly toward such as are widowed without real estate, who are living, at the time of the death of their husbands, in rented houses with rented furniture, or in hotels." *Id.* at 29.

88. *Id.* at 13. Obviously the statute was not without its problems. While it might have been more theoretically consistent with the community property system than were those on the books, it failed to distinguish between community and separate debts, and thus gave much power to the surviving spouse to control the amount inherited by the children. Although California reformed its probate code somewhat in 1878, Stow was not satisfied with the results and reintroduced her bill in Sacramento in 1883. Yet she returned to the Bay Area without seeing it through. DAVIS, *supra* note 3, at 48; *Work But Eight Hours a Day*, THE WOMAN'S HERALD OF INDUSTRY, Mar. 1883, at 1.

89. Recent work by Reva Siegel has uncovered efforts by women's rights activists in the Eastern states, particularly during the antebellum period, to posit a theory of common ownership of property acquired during marriage, as a way to compensate and empower wives, inasmuch as they clearly contributed to the financial success of the family. Reva B. Siegel, *Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850-1880*, 103 YALE L.J. 1073 (1994).

90. MLS SCRAPBOOK, *supra* note 1, (clippings from BOSTON DAILY ADVERTISER, Feb. 4, 1878; *A Bill to Protect Widows*, THE DAILY COURIER (Syracuse, N.Y.), Dec. 19, 1878; CHICAGO TIMES, Sept. 9, (1879?)). The common-law right of the widow to dower provided her with a life interest in one-third of her husband's real property. No doubt, Stow believed simply a change in the type of interest would be more achievable than additionally increasing the amount to one-half. For a brief time, Stow also advocated a reform which would have delayed the probating of a husband's will until his widow's death. MLS SCRAPBOOK, *supra* note 1, (*No Wills for Men. A Movement to Prevent the Probating of a Husband's Will Until Death of the Widow*, clipping from THE RECORD (Philadelphia), Sept. 3, 1878). However, Stow apparently admitted that these proposals were stop-gap measures and that she really hoped someday Congress would institute her Omnibus Marriage Act based on common property notions. MLS SCRAPBOOK, *supra* note 1, (*Certain Present Claims of Women*, clipping from THE REPUBLICAN (Springfield, Mass.), Feb. 25, (year unknown)).

91. MLS SCRAPBOOK, *supra* note 1, (*The Rights of Widows*, clipping from BOSTON DAILY ADVERTISER, Feb. 4, 1878).
92. MLS SCRAPBOOK, *supra* note 1, (*Widow's Rights in Massachusetts*, clipping from 9 WOMAN'S J. 88 (1878)).
93. MLS SCRAPBOOK, *supra* note 1, (*The Rights of Widows*, clipping from EVENING TRANSCRIPT (Boston), Feb. 6, 1878).
94. *Id.*
95. *Id.*
96. MLS SCRAPBOOK, *supra* note 1, (*Widow's Rights in Massachusetts*, clipping from 9 WOMAN'S J. 88 (1878)).
97. *Id.* Unfortunately, the hearing broke down into a debate on woman suffrage, in which the committee conflated and confused the two issues. MLS SCRAPBOOK, *supra* note 1, (*The Rights of Widows*, clipping from THE EVENING TRANSCRIPT (Boston), Feb. 6, 1878).
98. MLS SCRAPBOOK, *supra* note 1, (*The Rights of Widows*, clipping from BOSTON DAILY ADVERTISER, Feb. 26, 1878).
99. MLS SCRAPBOOK, *supra* note 1, (*Literary Matters: New Publications*, clipping from EVENING TRANSCRIPT (Boston), July 16, 1879 (referring to failed second attempt to pass bill)).
100. MLS SCRAPBOOK, *supra* note 1, (*Woman Under the Law*, clipping from NEWS (New York City), (n.d.)).
101. MLS SCRAPBOOK, *supra* note 1, (*A Plea for Widow's Rights*, clipping from THE SUN (New York City), (n.d.)).
102. MLS SCRAPBOOK, *supra* note 1, (*A Bill to Protect Widows*, clipping from THE DAILY COURIER (Syracuse, N.Y.), Dec. 19, 1878). *The Nation* was bolder in its disagreement with Stow's assertion that property is jointly accumulated during the marriage: "Among well-to-do people the wife does no work except such as involved in housekeeping and in bringing up her children, and it would be a great stretch of language to call this her share in a joint accumulation of property." MLS SCRAPBOOK, *supra* note 1, (clipping from THE NATION, July 11, 1878).
103. MLS SCRAPBOOK, *supra* note 1, (*A Plea for Women*, clipping from THE DAILY PRESS, Feb. 21, 1879).
104. MLS SCRAPBOOK, *supra* note 1, (*A Proposed Marriage Property Act*, clipping from THE CINCINNATI COMMERCIAL, Dec. 12, 1879).
105. MLS SCRAPBOOK, *supra* note 1, (clipping from THE POST (Washington, D.C.), Dec. 11, 1879).
106. MLS SCRAPBOOK, *supra* note 1, (*Our Probate Laws*, clipping from SAN FRANCISCO EVENING POST, June 16, 1880).
107. *Id.* Stow asserted that "the law of succession should be simple, inexpensive, uniform, National Law instead of a meshwork of subtle state intricacies." DAVIS, *supra* note 3, at 49.
108. MLS SCRAPBOOK, *supra* note 1, (*No Wills for Men*, clipping from THE RECORD (Philadelphia), Sept. 3, 1878; *Anti-Probate League*, clipping from 3 BALLOT BOX, Sept. 1878, at 4; *Anti-Probate Manifesto*, clipping from THE WOMAN'S HERALD OF INDUSTRY, Jan. 1882, at 2).
109. MLS SCRAPBOOK, *supra* note 1, (clippings from *Mrs. J. W. Stow, Independent Candidate for Governor of California*, THE WOMAN'S HERALD OF INDUSTRY, July 1882, at 1; *Equal Rights Platform*, NAT'L EQUAL RTS (formerly THE WOMAN'S HERALD OF INDUSTRY), Nov. 1884, at 1).
110. As one reviewer saw it, "Mrs. Stow does not ask ballots for the woman, but simply her rightful share of the dollars she brought into the family firm and helped to make as an equal member of it." MLS SCRAPBOOK, *supra* note 1, (clipping from THE REPUBLICAN (St. Louis), Mar. 27, 1880).

111. ELLEN C. DUBOIS, *FEMINISM AND SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN'S MOVEMENT IN AMERICA, 1848-1869* 15-20 (1978).

112. 89 AM. HIST. REV. 620, 622 (1984). Baker's article has been reprinted in numerous anthologies. See e.g., *WOMEN, THE STATE, AND WELFARE* (Linda Gordon ed., 1990); *UNEQUAL SISTERS* (Vicki L. Luiz & Ellen C. DuBois eds., 2d ed. 1994).

113. Baker, *supra* note 112, at 622.

114. *Id.* at 624, 625.

115. DUBOIS, *supra* note 111, at 183.

116. *Id.*

117. For example, in *Probate Confiscation*, Stow argued that a woman did not need to view her husband as a lout in order to come over to Stow's side: "I know that every loving and trusting wife thinks, 'Oh! my husband could never be guilty of such an outrage toward me as to appoint an enemy of mine to have power and control over property which we . . . have earned together.' I thought so too. . . . Your husband may be stricken down without a will . . . , and then the Probate Court at once takes possession of your estate and the persons of yourself and children; or some mercenary villain may catch your husband's ear at the last moment, . . . and you may be robbed of all your possessions; and the *just* law protects this noble transaction." STOW, *PROBATE CONFISCATION* *supra* note 21, at 47-48.

118. DUBOIS, *supra* note 111, at 183.

119. *Id.*

120. *Probate Confiscation* was referred to by one reviewer as "a blast from the nostrils of an angry woman," who "flies into a passion against the despotism of the hideous male sect altogether, and she would probably like to have it abolished." MLS SCRAPBOOK, *supra* note 1, (clipping from NEW YORK OBSERVER, (n.d.)).

121. One reviewer wrote, "Mrs. Stow's book would be much improved if she had told her story simply, and set forth the laws and their bad working calmly, omitting the vehement rhetoric that obscures her narrative and weakens her statement." MLS SCRAPBOOK, *supra* note 1, (clipping from HARTFORD DAILY COURANT, Dec. 3, 1877). Yet, another acknowledged, "Mrs. Stow's writings are marked by so much honesty and so much vigor that a jesuitical or politic course would seem unnatural." MLS SCRAPBOOK, *supra* note 1, (clipping from DAILY EVENING TRAVELLER (Boston), Aug. 10, 1877).

122. MLS SCRAPBOOK, *supra* note 1, (clipping dated May 1, 1878).

123. Although she was much more successful in organizing the social science club, the organization was not without conflict. The group lost many members at one point of disagreement with Stow, who served as president, and it seemed to operate on the fringe of San Francisco society. DAVIS, *supra* note 3, at 109, 129-30.

124. In fact, family and probate law are the only two substantive areas in which federal courts will not hear cases even when the parties meet all other diversity jurisdiction requirements. This policy is known as "the domestic relations exception to diversity jurisdiction." While the federal courts historically have justified this policy by claiming a lack of expertise in these areas, today their refusal appears to be based on prestige concerns, rather than on dual federalism beliefs. See THOMAS E. ATKINSON, *LAW OF WILLS* 575 (2d ed. 1953); HOMER CLARK, *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* 286 (1968).

125. During the nineteenth century, the following states and territories operated under the community property system: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington. WILLIAM Q. DEFUNIACK, 1 *PRINCIPLES OF COMMUNITY PROPERTY* 72 (1943). Other jurisdictions, mostly east of the Mississippi, operated under the common law. *Id.* at 3-4.

126. Schuele, *supra* note 73, at 263-67.

127. MLS SCRAPBOOK, *supra* note 1, (*Probate Pilgrimage in Maine*, clipping from 8 WOMAN'S J. 362 (1887); *My Probate Pilgrimage*, clipping from WOMAN'S J. (n.d.); clipping from HARTFORD DAILY COURANT, Dec. 3, 1877 (reviewing *Probate Confiscation*); *The Rights of Widows*, clipping from BOSTON

DAILY ADVERTISER, Feb. 26, 1878). The HARTFORD DAILY COURANT concluded that "the probate laws of California are much more uncivilized than they are here in New England," while the BOSTON DAILY ADVERTISER claimed, "whatever the state of the citizens in California may be, [Stow's] denunciation and ridicule are inapplicable here." Stow's story was additionally marginalized by being characterized as an aberration bound to occur "in trying to use laws made to cover a multitude of cases." MLS SCRAPBOOK, *supra* note 1, (clipping from SAN FRANCISCO EVENING POST, Dec. 30, 1876).

128. MLS SCRAPBOOK, *supra* note 1, (letters to Marietta L. Stow from Harriet M. Emerson (June 3, 1879 and June 28, 1879)).

129. Baker, *supra* note 112, at 631.

130. *Id.*

131. DuBois, *supra* note 111, at 183.

132. Baker, *supra* note 112, at 631.

133. Harriet Emerson, recent widow of piano magnate William P. Emerson, wrote to Stow: "[W]e shall not have justice in property until woman has the ballot, of this I feel sure. I have been forced to this belief. When women make the laws, they will not rob one half of the family as men do. I would not have another marriage—until the laws make a widow to have of the property out-right one half. She well earns one half. . . . O if women would only study the law. How little we know—until forced to suffer the injustice of laws made by men." MLS SCRAPBOOK, *supra* note 1, (letter to Marietta L. Stow from Harriet Emerson (June 3, 1879)).